



February 2, 2000

Mr. Delmar L. Cain
General Counsel
Texas A&M University System
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR2000-0343

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132800.

Prairie View A&M University (the "university") received a request for the personnel files of a former employee of the university and documents concerning the employee's termination. You state that most of the records will be released to the requestor by January 6, 2000 with information redacted pursuant to section 552.117 of the Government Code. You contend that one of the items requested is excepted from disclosure pursuant to section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. You state that the university received the requestor's written request for information on December 10, 1999. You did not request a decision from this office until January 4, 2000, more than ten business days after the university's receipt of the requestor's written request. Therefore, we conclude that the university failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. -- Austin 1990, no writ);

City of Houston v. Houston Chronicle Publ'g Co., 673 S.W.2d 316, 323 (Tex. App.–Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Although you contend section 552.107 excepts the information from disclosure, this section does not constitute a compelling reason to withhold the requested information from public disclosure. *See* Open Records Decision No. 630 at 6-7 (1994). As you have not demonstrated that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the university must release the information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.


This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri", written in a cursive style.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/ch

Ref: ID# 132800

Encl. Submitted documents

cc: Mr. Charles Zucker
Texas Faculty Association
316 West 12th Street
Austin, Texas 78701
(w/o enclosures)